IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12494 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHEBUBBHAI HUSAINBHAI CHAUHAN-THROUGH-HIS MOTHER AMINABANU

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 12494 of 2004

MR S C OZA for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1,2

RULE SERVED for Respondent No. 2

MR HM PRACHCHHAK AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the detenu-petitioner through his mother Aminabanu Husainbhai Chauhan challenging his detention in pursuance of the order passed against him by Commissioner of Police, Ahmedabad City, on 6th August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner-detenu is under detention as bootlegger from 6th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that a crime bearing C.R. No.1218 of 2004 came to be registered against the petitioner-detenu before Prohibition Police Station, West Zone on 3rd August, 2004 under Bombay Prohibition Act whereby it was alleged that the petitioner-detenu was found in possession of foreign liquor worth Rs.1,04,400-00. The detaining authority took into consideration the investigation papers of the said crime thoroughly. From the above material, the detaining authority came to the conclusion that the petitioner-detenu was dealing in storing, selling and transporting prohibited liquor, knowing fully well that consumption of liquor is injuries to the public health. The detaining authority came to the conclusion that the activities of the petitioner-detenu in prohibited liquor was bootlegging activities within the meaning of the PASA Act. The detaining authority came to the conclusion that the activities of the petitioner-detenu were prejudicial to the maintenance of public order and adversely affecting the public health and, therefore, the bootlegging activities of the petitioner-detenu were required to be prevented forthwith. After taking into consideration other remedies available against the petitioner-detenu in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative, except to detain the petitioner-detenu as bootlegger in the PASA Act. The detaining authority, therefore, passed the order of detention of the petitioner-detenu, which is under challenge in this petition.

3. Learned Advocate Mr.S.C.Oza, for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length.

4. Out of various grounds urged on behalf of the petitioner-detenu and opposed and controverted by the learned AGP, it appears that this petition can be disposed of, on the sole issue that the order under challenge is required to be quashed on account of

non-application of mind by the detaining authority towards the relevant material.

5. As disclosed through the grounds of detention, while the detention order came to be passed on 6th August, 2004, the petitioner-detenu was in judicial custody and his application for bail was rejected by the court competent. Learned advocate for the petitioner makes a statement that till today, the petitioner-detenu is in judicial custody in the solitary crime registered against the petitioner-detenu. However, in this respect, the detaining authority reached to the subjective satisfaction that the petitioner-detenu was likely to move an application for bail again and was likely to be released on bail on so moving such application. The detaining authority also reached to the subjective satisfaction that on so releasing the petitioner-detenu on bail, he was likely to continue his anti social illegal activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and the detention order based on such material was liable to be quashed.

7. Thus, in the present case also, the subjective satisfaction reached by the detaining authority that the petitioner-detenu was likely to move bail application again and was likely to be released on bail is based on no material at all. The application filed by the petitioner-detenu earlier which resulted in rejection, is not material to infer that the petitioner was likely to move the bail application again and was likely to be released on bail. Therefore, the subjective satisfaction arrived at by the detaining authority in this respect is not legal, valid and in accordance with law. The order under challenge, thus, is required to be quashed on this ground alone.

8. In the result, in view of the above discussion, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City on 6th August,

2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu MAHEBUBBHAI HUSAINBHAI CHAUHAN is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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